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Respondent.

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No. 03-0124

RESPONDENT'S CLOSING BRIEF

THE PEOPLES GAS LIGHT AND COKE COMPANY, (“Peoples Gas”), by and through its attorneys, McGuireWoods LLP, files its Closing Brief at the request of the Hearing Examiner pursuant to 83 Ill. Adm. Code §§ 200,800, 840 and in support thereof states as follows:

INTRODUCTION

Mount Pisgah Missionary Baptist Church (“Complainant”) filed a Formal Complaint (“Complaint”) with the Illinois Commerce Commission (the “Commission”) on February 27, 2003 disputing a bill in the amount of \$5,713.07, dated October 25, 2002 (the “October 25, 2002 bill”), for gas usage at 4622 South King Drive (the “Church”). The Complaint alleges that the October 25, 2002 bill was an “estimated back charge” and requested that the Commission review such charges for accuracy. (Compl. ¶ 1)

Thereafter, on January 13, 2005, at the evidentiary hearing, Complainant sought to file a First Amended Complaint (“Amended Complaint”), in which it also alleged that there were gas leaks at the Church that affected the accuracy of the October 25, 2002 bill. (AC ¶ 8) Peoples Gas objected to the admission of the Amended Complaint. (Tr. 33-34)

The Hearing Examiner, however, allowed Complainant's Amended Complaint to the exclusion of Exhibit 4, the bill dated April 23, 2003. (Tr. 33-34)

PROCEDURAL HISTORY

On February 27, 2003, Complainant filed a Complaint with the Commission challenging the October 25, 2002 bill, which reflected previously unbilled gas usage associated with the Church for a period from October 25, 2001 through October 2, 2002. (Comp. ¶ 1) Thereafter, various status hearings were held and discovery was conducted regarding the Complaint. (See Commission Docket Sheet) Upon completion of discovery, the matter was continued on several occasions until March 8, 2004, when the one year requirement for hearing was to expire. (See Commission Docket Sheet) At that time the parties filed a Joint Request for Extension of the One Year Requirement for Hearing, which the Administrative Law Judge granted for 90 days. (See Commission Docket Sheet) After the extension of time was granted, the matter was again continued on June 22, 2004, July 29, 2004, August 4, 2004, August 19, 2004, November 17, 2004 and December 9, 2004. (See Commission Docket Sheet)

Because of the many continuances Complainant requested, the parties were required to file a second Joint Agreement for Extension of One Year Requirement for Hearing. (See Commission Docket Sheet) Thereafter, on January 13, 2005, an evidentiary hearing was held, at which time the Complainant attempted to file an Amended Complaint alleging that gas leaks at the Church affected the accuracy of the October 25, 2002 bill. (AC ¶ 8) Peoples Gas objected to the Amended Complaint as untimely, however, the Hearing Examiner allowed the Amended Complaint with the exclusion of Exhibit 4, the bill dated April 23, 2003. (Tr. 33-34)

At the evidentiary hearing, Complainant produced three witnesses on its behalf: Lawrence Holt, a boiler technician (Tr. 35); Helen Walker, the Church's secretary (Tr. 64); and Reverend Joseph Jackson, one of the Church's pastors. (Tr. 97). Peoples Gas produced three witnesses as well: Kevin Rice, a Field Service Supervisor for Peoples Gas (Tr. 116); Donald Taylor, a supervisor of meter testing and repair for Peoples Gas (Tr. 155); and Brian Schmoldt, a billing specialist for Peoples Gas. (Tr. 177). Testimony was taken from both parties and documentary evidence was admitted into evidence.

STATEMENT OF FACTS

A. The October 25, 2002 Bill

Complainant disputes a gas bill issued by Peoples Gas on October 25, 2002, which cancelled previous bills based on estimated gas usage and rebilled Complainant based on actual usage. Complainant's gas use was estimated from October 25, 2001 until October 2, 2002, when an actual read was taken, which indicated that Peoples Gas' previous estimates of Complainant's gas consumption was low. At the evidentiary hearing, the Church's secretary, Helen Walker, and one of the Church's pastors, Reverend Joseph Jackson, testified regarding the October 25, 2002 bill on behalf of Complainant. Brian Schmoldt, a billing specialist who investigated the Complaint, testified on behalf of Peoples Gas.

Helen Walker testified that she was the Church's secretary and that her duties included paying the bills, filing and keeping records. (Tr. 65) She testified that she also paid the Peoples Gas bills and made telephone calls regarding the bills when she found alleged discrepancies. (Tr. 66) Ms. Walker testified that she called Peoples Gas regarding the October 25, 2002 bill. (Tr. 67)

She testified that on July 1, 2003 she had a conversation with a Peoples Gas employee regarding the bill. (Tr. 69) Ms. Walker testified that she took notes of that conversation. (Tr. 69) Ms. Walker testified that her notes indicate that she asked the Peoples Gas employee who she spoke with why the Church was receiving high bills. (Tr. 69) (Complainant's Group Ex. p. 5) She testified that according to her notes, Peoples Gas' employee responded that the bill was high "because of late payments of November, December '02, January, February, March, April, June '03, because current bills were paid when the total amount due should have been paid." (Tr. 69) (Complainant's Group Ex. p. 5)

Ms. Walker testified regarding notes she made of other telephone calls to Peoples Gas as well. One such telephone call she notated was made on November 7, 2002, shortly after the October 25, 2002 bill was issued. (Tr. 78-79) (Complainant's Group Ex. p. 42) Ms. Walker testified that her notes state that she "[t]alked to Peoples Energy customer service and Ms. Davis and Mr. K. Thomas, supervisor working on the dispute. And then I have, like, the telephone number (312) 814-2850, Illinois Commerce Commission to request hearing." (Tr. 78-79) (Complainant's Group Ex. p. 42) She also testified that her notes on November 15, 2002 state: "Mr. Harvell waiting to hear from Peoples Gas to set up hearing request." (Tr. 79) (Complainant's Group Ex. p. 42)

Ms. Walker also testified regarding the day-to-day operations of the Church. She testified that the Church's regular hours were approximately 8:00 a.m. to 5:00 p.m., Monday through Saturday. (Tr. 83) Ms. Walker also testified that the Church held services every Sunday, bible study on Tuesdays and Wednesdays, and had special services for holidays. (Tr. 84-85) Ms. Walker testified that the Church was locked at all

other times. (Tr. 90) Ms. Walker testified that the building was old and that elderly and young children attended services, so they had to keep the temperature at a comfortable level. (Tr. 82-84) Ms. Walker also testified that there was a kitchen in the church that housed a stove, a refrigerator and a warmer. (Tr. 87)

Ms. Walker testified that the gas meter for the Church was located in the basement, but that she didn't know where it was located. (Tr. 86, 90) She testified that the basement was kept locked at all times, even when the Church was open to the public. (Tr. 90) She also testified that she was not even sure where the basement door was located and that if a Peoples Gas employee came to read the meter she would refer them to maintenance personnel or a deacon. (Tr. 87-88) She testified that there were two maintenance personnel whose hours were from 8:00 a.m. until 4:00 p.m. (Tr. 88) She also testified that the deacons were in at approximately 8:30 a.m. or 9:00 a.m. until approximately 1:00 p.m. or 2:00 p.m. (Tr. 89) Ms. Walker testified that the deacons were "in and out all day." (Tr. 89) Ms. Walker could not testify with any certainty how many times Peoples Gas came to read the meter after March 2002, when she started working as the Church's secretary. (Tr. 94)

Reverend Joseph Jackson also testified on behalf of Complainant regarding the October 25, 2002 bill. He testified that he had been a pastor at the Church for nine years and was the "ex officio of all operations of the church." (Tr. 98-99) Rev. Jackson testified that he was usually at the Church between 7:00 a.m. until 5:00 p.m. (Tr. 99) He also testified that he often left the Church for lunch, occasional funerals and visits to the sick in hospitals. (Tr. 104-05) He testified that there were approximately twenty two officers of the Church. (Tr. 99) Rev. Jackson testified that there were three doors to the

basement and that an Officer or pastor of the Church would need to lead a Peoples Gas employee to the basement to read the meter. (Tr. 106) Rev. Jackson did not bring any records with him regarding the meter – he only testified that he felt the gas bill was, “in [his] eyes, unnecessary and excessive.” (Tr. 99) He also testified that he agreed that the cost of gas had increased over the years and that if the same amount of gas were used as in the past, the bills would also increase. (Tr. 114-15)

Brian Schmoldt, a special services representative with Peoples Gas for six years, testified at the hearing on behalf of Peoples Gas. (Tr. 177) He testified that his job duties included maintaining Peoples Gas’ records, reviewing bills and conducting rebillings, and reviewing complaints filed with the Commission. (Tr. 177-78) Mr. Schmoldt testified that he investigated the Complaint and was familiar with Complainant’s account. (Tr. 178) He testified that as part of his investigation, he prepared a transcript summarizing Peoples Gas’ company records regarding Complainant’s account. (Tr. 178-79) (Resp. Ex. 1)

Mr. Schmoldt testified that a bill was issued on October 25, 2002 canceling prior billing from October 25, 2001 to September 23, 2002 and revising billing for the same period based on a reading taken on October 2, 2002, which alerted Peoples Gas to the fact that it had underestimated Complainant’s gas usage for that time period. (Tr. 183, 199) (Resp. Ex. 1 and 2)

Mr. Schmoldt testified that according to the records, the reading taken on October 2, 2002 was an actual read. (Tr. 189, 200) (Resp. Ex. 7) He testified that the records show the reading on that date was 27374. (Tr. 189) (Resp. Ex. 7) Mr. Schmoldt testified that Peoples Gas’ records indicate the last actual read before that time was on October 25,

2001. (Tr. 188) (Resp. Ex. 7) He testified that reading was 74680. (Tr. 188) (Resp. Ex. 7) He testified that the October 25, 2002 bill states "current estimate October 23rd" because the customer is normally billed around the 23rd of the month. (Tr. 200) (Resp. Ex. 2) He testified that if Peoples Gas were to bill Complainant on October 2, 2002 after taking the actual read and then again on October 23, 2002, it would be issuing two bills in one month. (Tr. 183-84, 199-200) He testified that therefore, Peoples Gas revised the billing in the normal monthly bill to avoid issuing two separate bills. (Tr. 200) Mr. Schmoldt testified that when gas use has been underestimated, it is Peoples Gas' policy to revise the billing and issue a make up bill, as it did here. (Tr. 187)

Mr. Schmoldt testified that according to Peoples Gas' records, at least three attempts were made to read the meter at the Church during the time period between October 25, 2001 and October 2, 2002; however, each attempt was unsuccessful. (Tr. 190-193) He testified that Peoples Gas' records show that an attempt was made on December 31, 2001; however, the Peoples Gas employee was unable to read the meter, as indicated in the employee's notes kept in Peoples Gas' records, which read: "NOT HOM." (Tr. 191-92) (Resp. Group Ex. 8) He testified that the records show that another unsuccessful attempt was made on February 28, 2001. (Tr. 192) (Resp. Group Ex. 8) He testified that the records show that at least one other attempt to read the meter was made on April 29, 2002; however, no one was present to allow Peoples Gas' employee access to the meter in the basement. (Tr. 193) (Resp. Group Ex. 8)

Mr. Schmoldt also provided testimony to show that the bill was explained to Complainant. Mr. Schmoldt testified that according to Peoples Gas' records, on October 29, 2002, Reverend Jackson called Peoples Gas regarding the Bill. (Tr. 201-02) (Resp.

Ex. 16) Mr. Schmoldt also testified that Peoples Gas' records indicate that the Peoples Gas employee who took the phone call explained to Rev. Jackson that the adjustments were made due to underestimated bills and suggested that to avoid estimated bills in the future he should read the meter and phone it in. (Tr. 201-02) (Resp. Ex. 16) Mr. Schmoldt testified that the records show that a few weeks later, on November 8, 2002, a Peoples Gas employee again spoke with Complainant about the Bill. (Tr. 203-05) (Resp. Ex. 17) Mr. Schmoldt testified that the records show that Complainant was offered a payment plan for twelve months with no late penalty charges; however, Complainant did not accept the offer. (Tr. 203-04) (Resp. Ex. 17) Mr. Schmoldt testified that Peoples Gas' records indicate that at least three attempts to contact Rev. Jackson regarding the Bill were made; however, he was unable to be reached. (Tr. 204) (Resp. Ex. 17) Mr. Schmoldt testified that the records indicate that the Peoples Gas employee who made the attempts to contact Rev. Jackson spoke with the secretary instead. (Tr. 204) (Resp. Ex. 17) Mr. Schmoldt testified that the record shows that at that time, Peoples Gas offered Complainant a payment plan with no late penalty charges, which the secretary did not accept. (Tr. 204) (Resp. Ex. 17)

B. Alleged Leaks at the Church between October 25, 2001 and October 2, 2002

Complainant alleges that there was a gas leak at the Church that affected the accuracy of the Bill. (Amend. Comp. ¶ 8) The record shows, however, that any leak that was discovered at the Church was before the meter and was repaired immediately. The only leak that was discovered after the meter was at the customer's appliance and therefore was not Peoples Gas' responsibility to repair. Lawrence Holt, a boiler technician, testified on behalf of Complainant regarding alleged leaks at the Church. Ms.

Walker and Rev. Jackson also provided limited testimony regarding this issue. Kevin Rice, a field service supervisor, testified on behalf of Peoples Gas.

Mr. Holt testified that he visited the Church on approximately five occasions after October 25, 2002, outside the relevant time period, to work on the boiler located in the basement. (Tr. 48, 54) Mr. Holt testified that in about October 2003 he could smell gas when walking down the stairs to the basement. (Tr. 38-39) He testified that the smell of gas indicated that there was a leak. (Tr. 38-39) He testified that the smell came from approximately 25-35 feet away from the boilers, near what he called a "pump." (Tr. 37-39, 43) He stated "I went over by the meter and where they got the pump and you could smell it right there." (Tr. 43) Mr. Holt testified that, based on his knowledge, a gas leak could affect the meter reading if it is after the meter. (Tr. 40)

However, when asked about the location of the "pump" in relation to the meter, Mr. Holt gave several different answers. When asked how far away the pump was from the meter, Mr. Holt testified believed the pump was "attached to the meter." (Tr. 52) When asked if the pump was before or after the meter, Mr. Holt stated, "I believe it could be before the meter or after, one of the two. I think it's before the meter." (Tr. 54) When asked to clarify, he answered, "I believe it was before the meter. That's what I believe." (Tr. 55) Only a few moments later, however, he testified that the pump was after the meter. (Tr. 59)

Mr. Holt also testified that when he first installed the boiler the pump was a "red pump", but that it had later been changed to a larger "gray pump." (Tr. 45) Mr. Holt also testified that he had no knowledge of pumps and that he only worked on boilers. (Tr. 51) In addition, Mr. Holt testified that he did not report the gas leak to Peoples Gas nor did he

test the amount of gas that was allegedly leaking. (Tr. 46, 53) Mr. Holt testified that he did not bring any invoices or records of any of his visits to the Church. (Tr. 61)

Rev. Jackson also testified that the only time he actually smelled gas was three weeks prior to the evidentiary hearing held on January 13, 2005. (Tr. 100) He testified that approximately three times a year baptisms were held in the basement with as many as thirty people and that he never smelled gas on any of those occasions. (Tr. 107) Rev. Jackson also testified that the only records of gas leaks he reviewed were records brought to his attention at the prehearing. (Tr. 108) He testified that Mr. Holt never made him aware of any gas leaks. (Tr. 110) Rev. Jackson testified that he did not bring any records with him regarding the leaks. (Tr. 111) He testified that the secretary would keep records of any leaks. (Tr. 112) Ms. Walker testified that she was not aware of any reports regarding any leaks nor did she make any telephone calls to Peoples Gas regarding any leaks. (Tr. 91, 97)

Peoples Gas produced Kevin Rice, an employee of Peoples Gas for 25 years and a field service supervisor for eight years, to testify on behalf of Peoples Gas. (Tr. 116) Mr. Rice testified that part of his job includes investigating leaks. (Tr. 116) He testified that he was familiar with Peoples Gas' service and maintenance orders. (Tr. 117) Mr. Rice testified that an odorant is put in the gas so that leaks can be detected by using a person's sense of smell. (Tr. 118)

Mr. Rice testified that there was no part of the meter that was called a "pump", and that what Mr. Holt referred to as a "pump" was really a gas valve that was used to turn the gas on and off. (Tr. 121-122) He testified that the valve can be red or gray in color, depending on the size. (Tr. 136, 145) He testified that a gas valve was located

before the meter and therefore a leak at the gas valve would have no effect on the amount of gas that was read through the meter. (Tr. 122)

Mr. Rice testified that according to Peoples Gas' computer records, a leak was detected at the Church on October 3, 2000, before the time period of the bill in dispute. (Tr. 123-24), (Resp. Group Ex. 6) He testified that the records show that the leak was at a four inch plug upstream of the meter. (Tr. 123-24), (Resp. Group Ex. 6). Mr. Rice explained that a four inch plug valve refers to the size of the gas valve used to turn the gas on and off. (Tr. 123-24) Mr. Rice testified that the term "upstream of the meter" means that the leak is before the meter. (Tr. 125). He also testified that a leak before the meter would not affect the gas usage Complainant was billed for because such gas would not have registered through the meter. (Tr. 127). Mr. Rice testified that Peoples Gas' records indicate the leak was repaired the same day it was discovered. (Tr. 123-24) (Resp. Group Ex. 6)

Mr. Rice testified that another leak was detected at the Church on September 28, 2001, also before the period in dispute. (Tr. 126-27), (Resp. Group Ex. 6) Mr. Rice testified that the records indicate that the leak was at a three inch plug valve. (Tr. 127), (Resp. Group Ex. 6) Again, Mr. Rice explained that a leak at the plug valve would be "upstream of," or before the meter. (Tr. 127) He testified that therefore, the leak would not affect the amount of gas Complainant was being billed for. (Tr. 127) He testified that the records show that the leak was repaired on the same day as it was discovered. (Tr. 172) (Resp. Group Ex. 6)

Mr. Rice testified that another leak was discovered on September 26, 2002. (Tr. 127), (Resp. Group Ex. 6) He testified Peoples Gas' records indicate that the leak was at

the “chp”, which Mr. Rice explained is short for “central heating plant.” (Tr. 127-28), (Resp. Group Ex. 6) Mr. Rice testified that “central heating plant” is another term for the customer’s appliance, or boiler. (Tr. 128) He testified that Peoples Gas is not responsible for repairing leaks at the customer’s appliance. (Tr. 128-29)

Mr. Rice testified problems were discovered with the boiler again on December 4, 2003. (Tr. 147-48) (Complainant’s Group Ex., p. 1), (Resp. Ex. 10) He testified that Peoples Gas issued a warning notice to Complainant stating that “high yellow flames” were discovered coming from the boiler. (Tr. 148), (Complainant’s Group Ex., p. 1), (Resp. Ex. 10) Mr. Rice explained that such a problem could affect the amount of gas consumption, but that Peoples Gas would not repair such a problem because it was at the customer’s appliance and therefore was not Peoples Gas’ responsibility. (Tr. 148)

Mr. Rice testified that another leak was discovered on December 4, 2003, after the period in dispute. (Tr. 133-34), (Resp. Group Ex. 6) Mr. Rice testified that according to the records, this leak was found at an 8-inch nipple. (Tr. 234) Mr. Rice testified that this nipple would be located before the meter. (Tr. 135), (Resp. Group Ex. 6) He testified that the leak was permanently repaired on December 5, 2003, one day after it was discovered. (Resp. Group Ex. 6)

According to Mr. Rice’s testimony, any leaks that were found at the Church were either before the meter and therefore did not affect the October 25, 2002 bill, or were at the customer’s appliance and therefore were not Peoples Gas’ responsibility to fix.

C. Meter Test Results for Meter No. P1918221

Complainant did not produce any witnesses or documentary evidence regarding any tests that were done on the Church’s meter. Peoples Gas’ records show, however,

that the meter at the Church, number P1918221, was tested before it was installed at the Church, during the time it was in use, and again after it was removed on December 5, 2003. Each test showed that the meter was working within the parameters of the Commission's rules.

Donald Taylor, a supervisor of meter testing and repair, testified on behalf of Peoples Gas at the evidentiary hearing. (Tr. 155) He testified that he has worked for Peoples Gas for 24 years and was a supervisor of meter testing and repair. (Tr. 155) He testified that he was familiar with the equipment maintenance records of Peoples Gas. (Tr. 155)

He testified that according to Peoples Gas' computer records, the meter that was in place at the Church during the period between October 25, 2001 and October 2, 2002 was meter number P1918221. (Tr. 158), (Resp. Ex. 2 and 9) He testified that according to the records, meter number P1918221 was tested on December 16, 1997, prior to its installation on March 3, 1998. (Tr. 158, 163), (Resp. Ex. 9) He testified that the records show that the meter was working within the range required by the Commission. (Tr. 160-61), (Resp. Ex. 9) He testified that Peoples Gas' records indicate the meter was also tested on November 15, 2002, one month after the October 25, 2002 bill was issued. (Tr. 172-73), (Resp. Ex. 9) He testified that the records indicate the results were "[p]oint zero nine." (Tr. 172) (Resp. Ex. 9) He testified that point zero nine was a "differential test of the meter and that is perfect." (Tr. 172)

Mr. Taylor also testified that Peoples Gas' records show meter number P1918221 was tested on December 18, 2003, shortly after it was removed on December 5, 2003. (Tr. 160) (Resp. Ex. 9) At the time it was working within the Commission's

requirements. (Tr. 160), (Resp. Ex. 9) Mr. Taylor testified that Peoples Gas' computer records indicate that meter number P1918221 was also tested on November 10, 2004. (Tr. 149), (Resp. Ex. 9) He stated that according to the test results, the meter was working well within the range required by the Commission Rules, which is plus or minus four percent after the meter is removed. (Tr. 159), (Resp. Ex. 9) According to Mr. Taylor's testimony and Peoples Gas' computer records, meter number P1918221 was working properly at all times from the time it was installed to the time it was removed. (Tr. 161-62), (Resp. Ex. 9)

ARGUMENT

I. Standard of Law

The Commission is given the authority to hear complaints regarding "any act or things done or omitted to be done in violation, or claimed violation, of any provision of [the Public Utilities Act, [220 ILCS 5/1-1-1, et seq., the "PUA"] or any order or rule of the Commission." 220 ILCS 5/10-108. The burden of proof is on the Complainant to establish the violation. *City of Chicago v. Illinois Commerce Commission*, 13 Ill.2d 607, 150 N.E.2d 776 (1958), *see also* 83 Ill. Admin. Code 200.570 (2004) (requires the Complainant to open and close proceedings, indicating that the Complainant has the burden of proof, just as the plaintiff has the burden of proof in the trial courts).

Estimated bills are allowed pursuant to Section 280.80(b)(1) of the Illinois Administrative Code, when "the utility has taken appropriate and reasonable measures to read the meter" 83 Ill. Admin. Code § 280.80(b)(1) In addition, under Section 280.100(a)(2), Peoples Gas is allowed to bill for services provided to a non-residential customer within two years from the date the services or commodities were supplied. 83

Ill. Admin. Code § 280.100(a)(2).

The accuracy of gas meters is also regulated by the Illinois Administrative Code. Section 500.190(a) requires that a new meter be “not more than two percent slow and not more than one percent fast.” 83 Ill. Admin. Code § 500.190(a). Section 500.240 governs procedures for adjusting a customer’s bill once a meter is removed and tested. For any adjustment measures to be taken, a meter, when removed from service, must have an average error of more than four percent. 83 Ill. Admin. Code § 500.240(a)(1).

The Complainant has failed to establish that Respondent violated any provision of the *Public Utilities Act* or *Illinois Administrative Code* in connection with the October 25, 2002 bill.

II. The preponderance of the evidence shows that the amount of gas usage was based on *actual* reads taken on October 25, 2001 and October 2, 2002; therefore, the October 25, 2002 bill is accurate.

Complainant alleges the amount it was billed in the October 25, 2002 bill is not accurate. Complainant, however, failed to present any evidence to prove that Peoples Gas overbilled Complainant. Complainant produced two witnesses to testify regarding the October 25, 2002 bill: Helen Walker, the Church’s secretary and Reverend Joseph Jackson, one of the Church’s pastors.

The only thing elicited from Ms. Walker’s testimony was that she called Peoples Gas to dispute the October 25, 2002 bill. (Tr. 67, 69) The only documentary evidence she provided was her own handwritten notes regarding those telephone calls. Those notes don’t even come close to showing that the October 25, 2002 bill was inaccurate. In fact, Ms. Walker’s notes show just the opposite – that Peoples Gas was billing Complainant properly and that Complainant simply could not keep up with the bills.

Importantly, Ms. Walker testified that she notated a conversation with a Peoples Gas employee who told her the bill was high “because of late payments of November, December ’02, January, February, March, April, June ’03” (Tr. 69) (Complainant’s Group Ex. p. 5) Furthermore, her other two notations she testified to simply set forth the fact that she had called Peoples Gas to dispute a bill and that Peoples Gas was working on the dispute and was waiting on the Commission to request a hearing. (Tr. 78-79) (Complainant’s Group Ex. p. 42)

Ms. Walker’s testimony also showed that Complainant used a substantial amount of gas at the Church. Ms. Walker testified that the Church was open to the public from approximately 8:00 a.m. until 5:00 p.m. six days a week. (Tr. 83) In addition, she testified that the Church held regular Sunday services in addition to special services for holidays. (Tr. 84-85) She also stated that elderly and young children attended those services and therefore the Church would be required to maintain a level of heat that would be comfortable for those individuals. (Tr. 82-84) Moreover, she also testified that the kitchen housed a stove and warmer, which would require gas to run. (Tr. 87)

In addition, Rev. Jackson’s testimony also falls far short of the burden Complainant must show to prove that the October 25, 2002 bill was inaccurate. Rev. Jackson’s testimony was merely a recitation of his opinion that the bill seemed excessive. In fact, his only testimony regarding the October 25, 2002 bill was that “in [his] eyes, [the bill was] unnecessary and excessive.” (Tr. 99) Moreover, he testified that he realized that the cost of gas had increased over the years and that if the Church used the same amount of gas as it had in the past, the bills would be higher as a result. (Tr. 114-15) Rev. Jackson did not provide any testimony at all regarding why the bill seemed

excessive or any evidence showing that, in fact, it was excessive.

Peoples Gas, on the other hand, has provided extensive documentation to evidence that it followed the Commission's rules and properly billed Complainant for actual gas used at the Church. Mr. Schmoldt testified that he investigated the Complaint and created a transcript summarizing his findings. (Tr. 178-79) (Resp. Ex. 1) He testified that Peoples Gas' records show that an actual reading was taken on October 25, 2001 and that Peoples Gas was unable to gain access to read the meter thereafter. (Tr. 188-89) (Resp. Ex. 1 and 7)

Mr. Schmoldt testified that the October 2, 2002 actual read alerted Peoples Gas that it had underestimated Complainant's gas usage and therefore it revised the bill based on the actual readings. (Tr. 183, 199) (Resp. Ex. 1 and 2) It is within the Commission's rules to issue a bill as far back as two years for commercial property. 83 Ill. Admin. Code § 280.100(a)(2). The actual reading taken on October 25, 2001 was 74680. (Tr. 188-89) (Resp. Ex. 7) The actual reading taken on October 2, 2002 was 27374. (Tr. 188-89) (Resp. Ex. 7) Therefore, the actual amount of gas used from October 25, 2001 through October 2, 2002 was 52,694 cubic feet of gas. (Resp. Ex. 7) The estimated amount of Complainant's gas consumption was 41,789 cubic feet of gas. (Resp. Ex. 7) That is a difference of 10,905 cubic feet of gas, which is what Complainant was rebilled for in the October 25, 2002 bill. (Resp. Ex. 7)

Mr. Schmoldt also explained that the October 25, 2002 revised billing was based on the October 2, 2002 actual read despite the fact that the bill said it was estimated on October 23, 2002. (Tr. 183-84, 199-200) His testimony was that a customer is normally billed on the 23rd of the month, and to avoid mailing a customer two bills in one month,

Peoples Gas would rebill Complainant in the normal monthly bill. (Tr. 183-84, 199-200) In addition, Mr. Schmoldt testified that in an attempt to help Complainant pay its bill, Peoples Gas offered a payment plan with no late penalty charges at least two times. (Tr. 203-05) (Resp. Ex. 17)

Through Mr. Schmoldt's testimony and the company records, Peoples Gas has shown that it has substantially complied with the Commission's rules and that it has properly rebilled Complainant's account based on actual meter readings.

III. Estimate readings were appropriate based upon lack of reasonable access to the meter in the Church

The Illinois Administrative Code allows a utility to estimate a customer's bills when it has taken appropriate and reasonable measures to read the meter. 83 Ill. Admin. Code § 280.80(b)(1) Mr. Schmoldt testified that Peoples Gas estimated Complainant's gas use until October 2, 2002, when Peoples Gas was able to access the meter to take an actual reading. (Tr. 187-89) Here, Mr. Schmoldt testified that Peoples Gas tried to access the meter on at least three occasions, but was unable to do so. (Tr. 190-193) (Resp. Ex. 8) Additionally, Mr. Schmoldt testified that the records show that Peoples Gas also informed Rev. Jackson that if he did not want his bills estimated that he should read the meter and call it in to Peoples Gas. (Tr. 201-202) (Resp. Ex. 16)

As far as reading the meter was concerned, Ms. Walker's testimony was that she did not have access to the basement; therefore, she would not be able to show a Peoples Gas employee where to go to read the meter. (Tr. 87-88) In fact, she did not even know how to get to the basement or where the meter was located in the basement. (Tr. 86, 90) Furthermore, Ms. Walker testified that if a Peoples Gas employee came to read the meter, she would refer them to the deacons, who were "in and out all day." (Tr. 87-88, 89)

Moreover, Rev. Jackson also testified that he often left the Church for lunch, occasional funerals and visits to the sick. (Tr. 104-05) As a result, if a Peoples Gas employee came while the deacons were unavailable, he would be unable to read the meter. In fact, that is what happened on at least three occasions, which Brian Schmoldt, a billing specialist with Peoples Gas, testified to. Mr. Schmoldt testified that according to Peoples Gas' records, at least three attempts were made to read the meter at the Church during the time period between October 25, 2001 and October 2, 2002; however, each attempt was unsuccessful. (Tr. 190-193) He testified that Peoples Gas' records show that an attempt was made on December 31, 2001; however, the Peoples Gas employee was unable to read the meter. (Tr. 191-92) (Resp. Group Ex. 8) He testified that the records show that another unsuccessful attempt was made on February 28, 2001. (Tr. 192) (Resp. Group Ex. 8) He testified that the records show that at least one other attempt to read the meter was made on April 29, 2002; however, no one was present to allow Peoples Gas' employee access to the meter in the basement. (Tr. 193) (Resp. Group Ex. 8). (Tr. 190-193) Each of those attempts was made during the time period in which the Church's bills were estimated.

Mr. Schmoldt also testified that according to Peoples Gas' records, a Peoples Gas employee also made three attempts to contact Rev. Jackson by telephone to discuss the bill but was unable to reach him. (Tr. 204) (Resp. Ex. 16) This is directly contradictory to Ms. Walker's testimony that "Reverend Jackson is always on the premises . . . if [the deacons] did leave, Reverend Jackson is there" (Tr. 89) Therefore, Peoples Gas has shown that it made reasonable efforts to take actual readings of the Church's meter and was therefore in compliance with the Commission's rules.

IV. Any gas leaks at the Church did not affect the amount of gas billed on the October 25, 2002 bill because such leaks were either before the meter or were at the customer's appliance.

Complainant has failed to meet its burden of proof that gas leaks affected its gas usage at the Church. Complainant provided no documentary evidence whatsoever regarding any gas leaks at the Church. The testimony of Lawrence Holt, Complainant's boiler expert, was not credible because his testimony regarding an alleged "pump" was confusing and void of proper industry terminology. He could not consistently testify where any alleged leaks were located in relation to the meter. The testimony of Peoples Gas' leak expert, Kevin Rice, corroborates the fact that Mr. Holt's testimony was not reliable and further supports a finding that any gas leaks that were discovered at the Church did not have any affect on the amount of gas billed in the October 25, 2002 bill.

Mr. Holt testified that he visited the Church on at least five occasions after October 2002, the relevant period, and that he smelled gas each of those occasions; however, he never called the gas company. (Tr. 38-39, 48, 54) He testified that the smell came from approximately 25-35 feet from the meter, near what he called a "pump." (Tr. 37-39, 43) Kevin Rice testified that the "pump", as Mr. Holt referred to it, is actually a gas valve that is used to turn the meter on and off. (Tr. 121-22) Mr. Rice testified that the valve can be red or gray, depending on the size. (Tr. 136, 145) Confirmation that the "pump" and "valve" refer to the same piece of equipment is shown by Mr. Holt's testimony that the "pump" was red at one point in time and that it later was a larger size and gray in color. (Tr. 45)

The importance of the valve, however, is not so much what it is called, but rather, where it is located in relation to the meter. Both Mr. Rice and Mr. Holt testified that a

gas leak would only affect the amount of gas read through the meter if it is *after* the meter. (Tr. 40, 148) Mr. Holt could not testify with any certainty where the valve was located in relation to the meter. He gave numerous inconsistent answers and therefore his testimony regarding the location of the leak is not credible. His testimony regarding the location of the valve switched back and forth throughout his testimony – “I believe it could be before the meter or after, one of the two.” (Tr. 52-59) Later, Mr. Holt stated he believed the pump was before the meter, then changed his mind to state that it was after the meter. (Tr. 54-56, 59) In fact, at one point Mr. Holt even testified that the pump was “attached to the meter.” (Tr. 52)

Mr. Rice’s testimony regarding the location of the leaks, on the other hand, was based upon Peoples Gas’ business records. Mr. Rice testified that the records show that every single leak that was found at the Church was *before* the meter and therefore would not affect gas usage. (Tr. 123-135) (Resp. Group Ex. 6) Furthermore, such leaks were not even during the time period in dispute and they were all immediately repaired the day they were discovered. (Tr. 123-135) (Resp. Group Ex. 6) Mr. Rice testified that the only leak that was discovered *after* the meter was at the customer’s boiler. (Tr. 127-28) (Resp. Group Ex. 6) As Mr. Rice testified, it is not Peoples Gas’ responsibility to repair a customer’s appliance. (Tr. 128-29) Therefore, any gas that escaped as a result of a leak at Complainant’s boiler and any related bills remained the Complainant’s responsibility.

V. The Meter was working properly at all times that it was in service at the Church.

Complainant also failed to meet its burden to show that the meter was not working within the Commission's rules. Complainant failed to produce any witnesses regarding the functions of the meter or any documentary evidence to show that it was not working properly. Peoples Gas has shown, however, through the testimony of Donald Taylor, a supervisor of meter testing and repair, that the meter was tested before it was installed, while it was in operation at the Church, and after it was removed and that each time the meter was tested it passed the Commission's standards. *See* 83 Ill. Admin. Code §§ 500.190(a) and 240(a)(1).

Mr. Taylor testified that according to Peoples Gas' records, the meter that was in place at the Church from October 25, 2001 until October 2, 2002 was meter number P1918221. (Tr. 158) He testified that according to Peoples Gas' records, meter number P1918221 was tested on December 16, 1997, before it was installed. (Tr. 158, 163) (Resp. Ex. 9) He testified that the records show the meter was working within the range required by the Commission at that time. (Tr. 160-61) (Resp. Ex. 9) He also testified that Peoples Gas' records show meter number P1918221 was also tested on November 15, 2002. He testified that after the meter was removed on December 5, 2003, it was again tested on December 18, 2003 and November 10, 2004 and it was in compliance with the Commission's standards. (Tr. 149, 160, 172-73) (Resp. Ex. 9) He testified that the records indicate that each time the meter was tested it passed Commission standards. (Tr. 149, 160, 172-73) (Resp. Ex. 9)

Mr. Taylor's testimony and documentary evidence produced proves that the meter was working properly at all times it was in use at the Church. As a result, Peoples Gas

has shown that the meter test results support the accuracy of the October 25, 2002 bill.

CONCLUSION

Complainant failed to establish that Peoples Gas violated any provision of the Public Utilities Act or any of the Commission's rules. Peoples Gas has sufficiently established that it properly estimated Complainant's bill pursuant to 83 Ill. Admin. Code § 280.80(b)(1). In addition, Brian Schmoldt's testimony shows that Peoples Gas made substantial efforts to read the meter, however it was unable to do so because no one was present at the Church to allow the Peoples Gas employee access to the meter. Furthermore, Mr. Schmoldt testified that an actual read was taken on October 2, 2002. Based on that actual read, it was discovered that Peoples Gas had underestimated Complainant's gas usage and therefore it properly issued a timely make up bill pursuant to 83 Ill. Admin. Code § 280.100(a)(2). Moreover, Peoples Gas has shown, through Kevin Rice's testimony, that any leaks discovered at the Church did not affect the amount of gas Complainant was billed for because the gas leaks were either before the meter or were Complainant's responsibility to remedy. Finally, Peoples Gas has established through Mr. Taylor's testimony that the meter was working well within the requirements required by 83 Ill. Admin. Code §§ 500.190 and 240.

Complainant, however, failed to meet its burden of proof. Its witnesses, Helen Walker and Reverend Joseph Jackson offered no factual support for their assertions that the October 25, 2002 bill was inaccurate. Their testimony showed that the only people with keys to the basement, where the meter was located, were the deacons and maintenance personnel, who were not even present at all times during the day. Furthermore, Rev. Jackson's testimony shows that he only reported a gas leak on one

occasion three weeks prior to the evidentiary hearing in 2005, which was well after the disputed period.

WHEREFORE, Respondent, The Peoples Gas Light and Coke Company, respectfully requests that the Administrative Law Judge issue a Proposed Order denying Complainant, Mount Pisgah Missionary Baptist Church's Complaint.

Respectfully submitted,

THE PEOPLES GAS LIGHT AND
COKE COMPANY

By: 

One of its attorneys

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

MT. PISGAH MISSIONARY BAPTIST CHURCH,)

Complainant,)

vs.)

No. 03-0124

THE PEOPLES GAS LIGHT AND COKE COMPANY,))

Respondent.)

NOTICE OF FILING

To:	Mr. Amos Smith	Admin. Law Judge Glennon Dolan
	Amos Smith Law Firm	Illinois Commerce Commission
	120 W. Madison St., Suite 1104	160 North LaSalle Street, Ste. C-800
	Chicago, IL 60602	Chicago, Illinois 60601-3104

PLEASE TAKE NOTICE that on this date Respondent in the above-captioned case sent by U.S. mail for filing with the Illinois Commerce Commission, 527 East Capitol Avenue, P.O. Box 19280, Springfield, Illinois 62701, Respondent's Closing Brief.

DATED: January 27, 2005

THE PEOPLES GAS LIGHT
AND COKE COMPANY

By: 

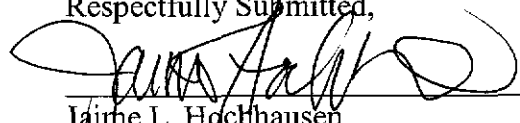
Jaime L. Hochhausen, one of its attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Respondent's Closing Brief on January 27, 2005 to:

VIA HAND DELIVERY	VIA U.S. MAIL
Mr. Amos Smith	Admin. Law Judge Glennon Dolan
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